

*Judson Warden*

*McGowan v Stutesman, et al.*

*October 3rd, 2017*



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172 East 8th Ave

Eugene, OR 97401

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<p style="text-align: center;">1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT</p> <p style="text-align: center;">FOR THE DISTRICT OF OREGON</p> <p style="text-align: center;">Eugene Division</p> <p>RONDA MCGOWAN, Personal )  Representative for Estate of )  Brian Babb, LEE BABB, CONNOR )  BABB, by and through Guardian )  ad litem, STEPHANIE WOODCOOK, )  KAYLEE BABB, )  )   Plaintiffs, )  v. ) No. 6:17-cv-00424-TC  )   WILL STUTESMAN, OFFICER GROSE, )  OFFICER PIESKE, Sgt. MCALPINE, )  CITY OF EUGENE, a municipal )  subdivision of the State of )  Oregon, JANE DOE CALL TAKER, )  John and Jane Does 1-10, )  )   Defendants. )</p> <p style="text-align: center;">DEPOSITION OF JUDSON WARDEN</p> <p style="text-align: center;">October 3, 2017</p> <p style="text-align: center;">Tuesday</p> <p style="text-align: center;">3:31 P.M.</p> <p>THE DEPOSITION OF JUDSON WARDEN was taken  at Harrang Long Gary Rudnick, 360 East 10th Avenue,  Suite 300, Eugene, Oregon, before Christine Oljace,  CSR, RPR, CRC, Certified Shorthand Reporter in and  for the State of Oregon.</p>	<p style="text-align: right;">3</p> <p>1</p> <p>2 INDEX</p> <p>3</p> <p>4 WITNESS.....PAGE</p> <p>5 JUDSON WARDEN</p> <p>6 BY MS. BURROWS 4</p> <p>7</p> <p>8 EXHIBITS: NONE</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">2</p> <p>1</p> <p>2 APPEARANCES</p> <p>3 For the Plaintiffs:</p> <p>4 MS. MICHELLE R. BURROWS  420 SW Washington, Suite 300  5 Portland, Oregon 97204  503/241-1955  6 michelle.r.burrows@gmail.com</p> <p>7 For the Defendants:</p> <p>8 HARRANG LONG GARY RUDNICK, PC  360 East 10th Avenue, Suite 300  9 Eugene, Oregon 97401  541/485-0220  10 BY: MR. JEFFERY MATTHEWS  jeff.matthews@harrang.com</p> <p>11</p> <p>12 Also Present:</p> <p>13 MS. JAMIE IBOA</p> <p>14 WILL STUTESMAN</p> <p>15 MATTHEW GROSE</p> <p>16</p> <p>17 Reported by:</p> <p>18 CHRISTINE OLJACE, CSR-RPR</p> <p>19 CC REPORTING &amp; VIDEOCONFERENCING</p> <p>20 EUGENE 541/485-0111</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 JUDSON WARDEN,</p> <p>2 having been first duly sworn to testify the truth,</p> <p>3 the whole truth, and nothing but the truth, was</p> <p>4 examined and testified as follows:</p> <p>5</p> <p>6 EXAMINATION</p> <p>7 BY MS. BURROWS:</p> <p>8 Q. Officer Warden, my name is Michelle</p> <p>9 Burrows. I am an attorney for the Estate of Brian</p> <p>10 Babb. This is the time set for your deposition in a</p> <p>11 federal civil rights lawsuit filed against Officer</p> <p>12 Stutesman and the City of Eugene, and you are here</p> <p>13 to talk to me about your participation in an</p> <p>14 incident on March 30th of 2015.</p> <p>15 Have you ever been deposed before?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. How many times have you been deposed?</p> <p>18 A. I think two times.</p> <p>19 Q. Two times. Could you tell me why you were</p> <p>20 deposed? What kind of case was it?</p> <p>21 A. Civil rights violation for Ian Van Orman,</p> <p>22 and I think there was one more, but I don't recall</p> <p>23 which one that was.</p> <p>24 Q. Have we ever faced each other in a</p> <p>25 deposition?</p>

<p style="text-align: right;">5</p> <p>1 A. No, ma'am. Not that I recall.</p> <p>2 Q. Okay. How long ago was the last</p> <p>3 deposition?</p> <p>4 A. Maybe ten years ago.</p> <p>5 Q. Okay. The rules really haven't changed in</p> <p>6 ten years. So this is your time to give me some</p> <p>7 testimony. I am not allowed to just give you a call</p> <p>8 and take you out for a cup of coffee, so we have to</p> <p>9 do it this more formal way.</p> <p>10 Everything we say to each other is being</p> <p>11 taken down by this lady, the court reporter, and you</p> <p>12 will have the opportunity to read and review the</p> <p>13 transcript that she creates.</p> <p>14 So I know that you have probably testified</p> <p>15 in court before, have you not?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. So the rules are kind of the same. You</p> <p>18 are under oath. Everything you say is going to be</p> <p>19 taken down. I can use it as actual evidence in the</p> <p>20 future or I can use it to impeach or just show</p> <p>21 differences of testimony. Do you understand that?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. Okay. If you don't understand my</p> <p>24 questions, I ask you to please ask me to clarify.</p> <p>25 It is more important to me that we understand each</p>	<p style="text-align: right;">7</p> <p>1 familiar with it before I ask you questions, so just</p> <p>2 let me know if you need a few minutes to read</p> <p>3 anything I give you.</p> <p>4 A. Okay.</p> <p>5 Q. There's usually another advice I give, but</p> <p>6 I just completely forgot.</p> <p>7 So if you don't mind, I would like to go</p> <p>8 through your background just a little bit.</p> <p>9 A. Okay.</p> <p>10 Q. How long have you been a police officer?</p> <p>11 A. 21 years.</p> <p>12 Q. Where did you start in law enforcement?</p> <p>13 A. As a reserve deputy with Lane County</p> <p>14 Sheriff's Office.</p> <p>15 Q. What year was that?</p> <p>16 A. 1996.</p> <p>17 Q. How long were you a reserve officer?</p> <p>18 A. Two years.</p> <p>19 Q. Then what you did do?</p> <p>20 A. Actually it was '94 to '96, and then I got</p> <p>21 hired with Eugene.</p> <p>22 Q. And did you go to the academy at that</p> <p>23 point?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. Patrol?</p>
<p style="text-align: right;">6</p> <p>1 other than anything else here today, because I don't</p> <p>2 get to come back. This is all I get with you is</p> <p>3 today.</p> <p>4 On the other side, if you don't -- if I</p> <p>5 don't understand your answers, I am probably going</p> <p>6 to ask you to explain it to me or clarify it, and it</p> <p>7 is not because I am trying to trick you. I just</p> <p>8 don't really understand what you are telling me,</p> <p>9 because I have never done your job. I don't</p> <p>10 understand really what you do from the level that</p> <p>11 you do it, so sometimes I need a little extra help</p> <p>12 in understanding the situation.</p> <p>13 Have you reviewed any records in</p> <p>14 preparation for today's deposition?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. What have you reviewed?</p> <p>17 A. I reviewed the report written by Detective</p> <p>18 Mel Thompson regarding my statement to him.</p> <p>19 Q. Anything else?</p> <p>20 A. No, ma'am.</p> <p>21 Q. Okay. We have a few exhibits that we</p> <p>22 started with Officer Clark, and I may use some of</p> <p>23 the same with you. I do have some additional to</p> <p>24 show you today. If you have not seen an exhibit I</p> <p>25 give you, you have the right to read it and become</p>	<p style="text-align: right;">8</p> <p>1 A. Yes.</p> <p>2 Q. And are you a certified police officer</p> <p>3 right now?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. What levels of certification do you hold?</p> <p>6 A. I have my advanced certificate.</p> <p>7 Q. So we have a fan going on in here, and she</p> <p>8 has explained to me that it affects her ability</p> <p>9 sometimes to hear the witnesses speak, so I am going</p> <p>10 to just let her jog you if she can't hear your</p> <p>11 answer, so that is why we are having a little</p> <p>12 trouble hearing you.</p> <p>13 MR. MATTHEWS: Do speak up a bit.</p> <p>14 THE WITNESS: Okay.</p> <p>15 BY MS. BURROWS:</p> <p>16 Q. Okay. So I see that you have "Veteran" on</p> <p>17 your name tag and "SWAT" above it.</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Are you presently a member of the SWAT</p> <p>20 team?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. How long have you been a member of the</p> <p>23 SWAT team?</p> <p>24 A. 18 years.</p> <p>25 Q. What position do you hold on the SWAT team</p>

<p style="text-align: right;">9</p> <p>1 now?</p> <p>2 A. Right now?</p> <p>3 Q. Yes.</p> <p>4 A. Just a member. We don't have it like</p> <p>5 specific -- I am just an operator. Operator on the</p> <p>6 team.</p> <p>7 Q. What does an operator on your SWAT team</p> <p>8 mean?</p> <p>9 A. I do everything.</p> <p>10 Q. Everything? Because -- I asked because I</p> <p>11 have deposed a lot of SWAT officers over the last 31</p> <p>12 years, and they have explained that they are either</p> <p>13 a sniper or they are a specialist in deployment of</p> <p>14 gas, things like that. Do you do everything?</p> <p>15 A. Pretty much.</p> <p>16 Q. So are you certified on gas?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. And are you a sniper, qualified?</p> <p>19 A. No, ma'am. I have been.</p> <p>20 Q. Okay. Are you ever on an entry team?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. So it is just whatever they need, you can</p> <p>23 do?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. All righty. How long -- and you have done</p>	<p style="text-align: right;">11</p> <p>1 Q. Okay. How long have you been an FTO?</p> <p>2 A. Probably for about 15 years.</p> <p>3 Q. Okay. Are you presently working as an</p> <p>4 FTO?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. Do you have a trainee working with you</p> <p>7 now?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Okay. Are we taking you away from any</p> <p>10 specific thing you are supposed to be doing today?</p> <p>11 A. I am supposed to be shadowing him today.</p> <p>12 Q. Is he -- which phase of FTEP is he in?</p> <p>13 A. Fourth phase.</p> <p>14 Q. He will be fine.</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Okay. So I want to talk to you about the</p> <p>17 incident on March 30th of 2015. Do you remember</p> <p>18 that day?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. Do you remember what you did that day?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Let's ask -- let me ask you -- let's start</p> <p>23 with the beginning. What shift were you working?</p> <p>24 A. Third watch. 11 a.m. to 9 p.m.</p> <p>25 Q. Were you also on beat 5?</p>
<p style="text-align: right;">10</p> <p>1 that for 18 years?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. And are you still on the team?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. Okay. And the veteran, does that signify</p> <p>6 you have been in the military?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. And when were you in the military?</p> <p>9 A. From 1991 to 1998 in the Oregon National</p> <p>10 Guard.</p> <p>11 Q. Were you ever deployed overseas?</p> <p>12 A. No, ma'am.</p> <p>13 Q. Okay.</p> <p>14 A. Only for training.</p> <p>15 Q. Okay. Are you still in any position in</p> <p>16 the military?</p> <p>17 A. No, ma'am.</p> <p>18 Q. Okay. Other than the SWAT team, have you</p> <p>19 served on any other specialty teams within the</p> <p>20 Eugene Police Department?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. What have you served on?</p> <p>23 A. I am a firearms instructor, I am a field</p> <p>24 training officer, I am a bike instructor, and that</p> <p>25 is it.</p>	<p style="text-align: right;">12</p> <p>1 A. I was a wild card.</p> <p>2 Q. What does a wild card mean?</p> <p>3 A. It means I go wherever they need me.</p> <p>4 Q. And you were working patrol?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. Do you just drive all over the city?</p> <p>7 A. Mainly just the west side of town.</p> <p>8 Q. Okay. How did you hear about the incident</p> <p>9 at the Devos Street address?</p> <p>10 A. Via the radio.</p> <p>11 Q. What were you doing when you got that</p> <p>12 information?</p> <p>13 A. I was following up on a different</p> <p>14 investigation at headquarters.</p> <p>15 Q. Okay. Now, here we have Exhibit 1. Do</p> <p>16 you recognize Exhibit 1?</p> <p>17 A. I have never seen it, but it looks like</p> <p>18 probably the Devos address.</p> <p>19 Q. Okay. And Exhibit 2, do you recognize</p> <p>20 Exhibit 2?</p> <p>21 A. Exhibit 2 looks like an aerial photo of</p> <p>22 that --</p> <p>23 Q. And --</p> <p>24 A. -- reversed from Exhibit 1.</p> <p>25 Q. Okay. Exhibit 5 is the summary done by</p>

<p style="text-align: right;">13</p> <p>1 the investigators of the various video that was</p> <p>2 cap- -- that was captured on March 30th of the</p> <p>3 incident we are talking about. Have you looked at</p> <p>4 the video from your vehicle from that day?</p> <p>5 A. No, ma'am.</p> <p>6 Q. Ever?</p> <p>7 A. No.</p> <p>8 Q. Okay. Never mind about Exhibit 5.</p> <p>9 Exhibit 4 is a summary of an interview</p> <p>10 conducted of you by Officer Thompson, and could you</p> <p>11 take a look at Exhibit 4 and see if this is the</p> <p>12 document you reviewed in preparation for today's</p> <p>13 deposition?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. And is everything in that Exhibit 4</p> <p>16 accurate and a fair rendition of your statements to</p> <p>17 the officer?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. And as I understand it, your statement was</p> <p>20 not recorded by Officer Thompson. Is that correct?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Do you know why your statement was not</p> <p>23 recorded?</p> <p>24 A. No, ma'am.</p> <p>25 Q. Did you have a discussion with Officer</p>	<p style="text-align: right;">15</p> <p>1 person at the Devos address.</p> <p>2 Q. Do you remember anything else about the</p> <p>3 situation at the Devos?</p> <p>4 A. Shots fired and that there was still a</p> <p>5 roommate inside the house.</p> <p>6 Q. Do you remember anything about the -- any</p> <p>7 information about the occupant of the Devos Street</p> <p>8 address?</p> <p>9 A. The occupant as in --</p> <p>10 Q. Mr. Babb.</p> <p>11 A. I -- vaguely that he was a veteran, that</p> <p>12 he had been on the phone with a counselor.</p> <p>13 Q. The shot fired, did you learn when that</p> <p>14 shot had been fired?</p> <p>15 A. No, ma'am.</p> <p>16 Q. Was it your assumption that it had been</p> <p>17 recently fired?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Did you learn anything about Mr. Babb</p> <p>20 being suicidal?</p> <p>21 A. I think there was some mention of that.</p> <p>22 He had been talking to his counselor.</p> <p>23 Q. Okay. During the entirety of March 30th,</p> <p>24 while you are part of this incident at the Babb</p> <p>25 residence, do you remember hearing anything from the</p>
<p style="text-align: right;">14</p> <p>1 Thompson about whether he felt he needed to record</p> <p>2 your statement?</p> <p>3 A. No, ma'am.</p> <p>4 Q. Okay. So let's -- tell me where you were</p> <p>5 when you first received information about the</p> <p>6 situation at the Devos Street -- is it Devos or</p> <p>7 Devos?</p> <p>8 A. Devos.</p> <p>9 Q. Devos. I had one in 100 chances there.</p> <p>10 MR. MATTHEWS: And you missed it.</p> <p>11 Dang.</p> <p>12 BY MS. BURROWS:</p> <p>13 Q. So this Exhibit 2, there is some markings</p> <p>14 on it from the previous witness, Officer Clark. And</p> <p>15 I may have you write on this one as well and do a</p> <p>16 clean one for the next witness, but can you orient</p> <p>17 yourself to the layout of this picture and see if</p> <p>18 you recognize where you eventually were that day at</p> <p>19 this address?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. So tell me, when you first received</p> <p>22 information on dispatch about this situation, what</p> <p>23 initial information did you receive?</p> <p>24 A. Overhearing the radio traffic, I heard</p> <p>25 that there was shots fired with an intoxicated</p>	<p style="text-align: right;">16</p> <p>1 counselor on dispatch? Any conversations? Any</p> <p>2 statements? Anything from the counselor?</p> <p>3 A. That he had guns. It is like thousands of</p> <p>4 calls ago for me so --</p> <p>5 Q. Okay.</p> <p>6 A. He had some guns. He was a veteran that</p> <p>7 had been suffering from PTSD.</p> <p>8 Q. Did you learn that he had also been</p> <p>9 injured and had neurologic problems?</p> <p>10 A. I don't recall that.</p> <p>11 Q. Okay. There is some information that the</p> <p>12 counselor was on the phone with dispatch during a</p> <p>13 part of this incident on March 30th. Do you</p> <p>14 remember hearing on the radio the counselor actually</p> <p>15 talking or speaking?</p> <p>16 A. I didn't -- I never heard the counselor --</p> <p>17 Q. Okay.</p> <p>18 A. -- speaking.</p> <p>19 Q. So the information that you are getting</p> <p>20 about Mr. Babb and the situation is coming from</p> <p>21 dispatch?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. Did you get any information from fellow</p> <p>24 officers of what was going on?</p> <p>25 A. No. Just the radio traffic that was going</p>

17

1 on where he had been off and on with his counselor,  
 2 the dispatcher.  
 3 Q. Okay. So on this Exhibit 2, you will see  
 4 at the -- right there by the bottom, towards you,  
 5 those markings are from Officer Clark, so there is  
 6 an X1 which he has testified was the first position  
 7 he took when he got to the scene. And then X2 is  
 8 the second position he got at the scene, so he moved  
 9 up from here to here, and then he drove around here.  
 10 MR. MATTHEWS: And just for  
 11 clarification, we were talking about X2, and I  
 12 believe we can say that it was accurately X -- the X  
 13 with the DC next to it.  
 14 MS. BURROWS: Okay.  
 15 BY MS. BURROWS:  
 16 Q. Can you tell me where you first -- from  
 17 the first point in time you heard information on the  
 18 radio, where did you go? I am talking about this  
 19 incident.  
 20 A. I went to East Irwin.  
 21 MS. BURROWS: Do we have a  
 22 different-colored pen anywhere, like a red one?  
 23 MR. MATTHEWS: I don't.  
 24 BY MS. BURROWS:  
 25 Q. I do.

18

1 So using a red pen, could you please put  
 2 on there an X with your initials the very original  
 3 point you parked your car where you stopped.  
 4 A. Somewhere over here.  
 5 Q. Put your initials by it, please. Thank  
 6 you.  
 7 And was Officer Clark already present?  
 8 A. Yes, ma'am.  
 9 Q. Could you see his vehicle?  
 10 A. Yes, ma'am.  
 11 Q. And your call sign that day was 3E88?  
 12 A. 3 Edward 88.  
 13 Q. Is that still your call sign?  
 14 A. No, ma'am.  
 15 Q. What is your call sign today?  
 16 A. 3 zebra 38.  
 17 Q. 3 zero 88?  
 18 A. 3 zebra 38.  
 19 Q. But it was 3 Edward 88 on that day?  
 20 A. Yes, ma'am.  
 21 Q. Did you just decide to dispatch yourself  
 22 to that location?  
 23 A. Yes, ma'am.  
 24 Q. No one told you to go to that particular  
 25 place?

19

1 A. No, ma'am. Well --  
 2 Q. Go ahead.  
 3 A. -- no one told me to go to the address.  
 4 They sent me here specifically after I was en route.  
 5 Q. Did you go somewhere else before you went  
 6 to the X position you have marked for me?  
 7 A. No, ma'am.  
 8 Q. Who told you to go to the X position?  
 9 A. I believe it was Sergeant McAlpine.  
 10 Q. Do you remember why he told you to go to  
 11 that X position?  
 12 A. To take up a perimeter spot with Officer  
 13 Clark.  
 14 Q. Okay. Was Officer Clark still in his  
 15 vehicle when you arrived at your X position?  
 16 A. I don't recall.  
 17 Q. Okay. Did you speak to Officer Clark when  
 18 you arrived?  
 19 A. Yes.  
 20 Q. What did you two decide you were going to  
 21 do?  
 22 A. We were going to move up where we could  
 23 actually see the back of the residence and provide a  
 24 perimeter spot.  
 25 Q. Did you contact any neighbors upon your

20

1 first arrival?  
 2 A. I didn't. I think Officer Clark had  
 3 talked to the folks here at this house right here.  
 4 Q. And you are pointing to what I have had  
 5 him mark as neighbor house?  
 6 A. Yes, ma'am.  
 7 Q. Did you see any civilians around when you  
 8 first pulled in?  
 9 A. Yes, ma'am.  
 10 Q. Where were they located?  
 11 A. I think they were in the front of the  
 12 residence here.  
 13 Q. Did you make -- did you tell them to do  
 14 anything, direct them anywhere?  
 15 A. I think Officer Clark had taken care of  
 16 that, so I don't recall that I did.  
 17 Q. Okay. What was your understanding of what  
 18 was going on in the Babb house?  
 19 A. Basically a hostage situation, almost  
 20 sounded like.  
 21 Q. Who was being held hostage?  
 22 A. The roommate.  
 23 Q. By whom?  
 24 A. Mr. Babb.  
 25 Q. How did you get that information?

<p style="text-align: right;">21</p> <p>1 A. The roommate not free to go and shots 2 being fired in a house.</p> <p>3 Q. And who told you that the roommate was not 4 free to go?</p> <p>5 A. That was my understanding that it was 6 going to turn into this. I wasn't necessarily told 7 that he wasn't free to go, but most people don't 8 stay in a house when shots are being fired.</p> <p>9 Q. And how did you get that particular body 10 of information about the roommate?</p> <p>11 A. Being in the house?</p> <p>12 Q. Yes.</p> <p>13 A. From the dispatcher.</p> <p>14 Q. And the fact that you thought he might be 15 a hostage, what information were you given? Were 16 you told the roommate is a hostage?</p> <p>17 A. No.</p> <p>18 Q. Okay.</p> <p>19 A. I was told there is a roommate in this 20 house, and there is shots being fired. And like I 21 said, most people don't stick around when shots are 22 being fired inside a house.</p> <p>23 Q. Do you remember receiving information when 24 the roommate left the house?</p> <p>25 A. Yes, ma'am.</p>	<p style="text-align: right;">23</p> <p>1 Under the red X up here.</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. So we will call that your X2 position.</p> <p>4 A. Okay.</p> <p>5 Q. What could you see from the X2 position?</p> <p>6 A. The lower portion of this house here.</p> <p>7 Q. The lower portion?</p> <p>8 A. The lower and upper portion, but the 9 glare -- there was glare on the windows, so it was 10 hard to see in some of the windows.</p> <p>11 Q. And I know -- I understand from Officer 12 Clark and the fact that I have been at this location 13 there is a fence along the entirety of the back of 14 the Babb lot.</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember what the fence looked 19 like?</p> <p>20 A. No, ma'am.</p> <p>21 Q. How tall it was?</p> <p>22 A. Standard 6-foot fence, I do believe.</p> <p>23 Q. Okay. At some point you did scale that 24 fence. Is that correct?</p> <p>25 A. Yes, ma'am.</p>
<p style="text-align: right;">22</p> <p>1 Q. Do you recognize the name Antonini as the 2 roommate's name?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. And at the time when you arrived at the X 5 position originally, you were informed that 6 Mr. Antonini was still in the house?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. Okay. Officer Clark tells me that he drew 9 out his long rifle upon arrival. Did you also take 10 out a rifle?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. Why did you both pull out your rifles?</p> <p>13 A. We were on a perimeter position further 14 away from the house, and we were able to deliver 15 more accurate fire should that need be the case than 16 with our handguns.</p> <p>17 Q. So your goal -- you might have to shoot 18 somebody, and you wanted to be accurate. Is that 19 fair?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. Okay. So from the X position, where did 22 you go?</p> <p>23 A. Up in this area here with Officer Clark.</p> <p>24 Q. Okay. You made a red X at the DC 25 position. So could you put a 2 under that red X?</p>	<p style="text-align: right;">24</p> <p>1 Q. Do you remember how tall it was from 2 scaling it, then?</p> <p>3 A. No, ma'am. I didn't measure it.</p> <p>4 Q. Okay. Did you need help getting over the 5 fence or --</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Okay. So from your X2 position, could you 8 see the bottom floor of the Babb house?</p> <p>9 A. I think part of the time. If I was 10 standing, I could see it due to the angle, part of 11 the lower portion of the house, but not a clear 12 view.</p> <p>13 Q. All right. Did you ever see Mr. Babb show 14 up in any of the windows at the back of the house?</p> <p>15 A. No, ma'am.</p> <p>16 Q. Did you ever hear him yelling out of the 17 house?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. What could you hear him yelling?</p> <p>20 A. I could hear him yelling to go away, that 21 he wasn't a criminal.</p> <p>22 Q. Had you personally ever run any kind of 23 calls for service at that address?</p> <p>24 A. No, ma'am.</p> <p>25 Q. Any criminal history on Mr. Babb?</p>

<p style="text-align: right;">25</p> <p>1 A. (Shakes head.)</p> <p>2 Q. Is that a no?</p> <p>3 A. No, ma'am.</p> <p>4 Q. Do you know whether any other officer ran</p> <p>5 a criminal history of Mr. Babb?</p> <p>6 A. No, ma'am.</p> <p>7 Q. Do you know whether any other officer did</p> <p>8 a call for service at -- how many calls for service</p> <p>9 had been made at that house?</p> <p>10 A. No, ma'am.</p> <p>11 Q. Did you know anything about Brian Babb</p> <p>12 before you showed up other than what you told me?</p> <p>13 A. No, ma'am. That he was veteran. That was</p> <p>14 it.</p> <p>15 Q. Did you know him?</p> <p>16 A. No, ma'am.</p> <p>17 Q. You never ran into him?</p> <p>18 A. I can't say a hundred percent yes or no.</p> <p>19 Q. Okay.</p> <p>20 A. I used to work for a relative of his.</p> <p>21 Q. Which relative did you used to work for?</p> <p>22 A. Bert Babb.</p> <p>23 Q. What do you know about the Babb family, if</p> <p>24 anything?</p> <p>25 A. Nothing about that portion of the Babb</p>	<p style="text-align: right;">27</p> <p>1 Q. So the BearCat was already there on scene</p> <p>2 when you got to the X1 position?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. All right. And how did you know that?</p> <p>5 A. Because I was going to get the BearCat to</p> <p>6 bring it out there, but Officer Pieske had already</p> <p>7 taken it out to the scene.</p> <p>8 Q. Did someone ask you to get the BearCat</p> <p>9 originally?</p> <p>10 A. Yes, ma'am. Sergeant McAlpine.</p> <p>11 Q. And were you still at the -- where were</p> <p>12 you when McAlpine asked you to do that?</p> <p>13 A. I was probably somewhere between</p> <p>14 headquarters and 2 and Lincoln, where we keep the</p> <p>15 BearCat.</p> <p>16 Q. Did he call you on the radio?</p> <p>17 A. I called him on the phone.</p> <p>18 Q. On the phone. Why did you do that?</p> <p>19 A. To see if they wanted that, because it is</p> <p>20 an armored vehicle.</p> <p>21 Q. Why did you think they would need the</p> <p>22 armored vehicle?</p> <p>23 A. Because shots had been fired.</p> <p>24 Q. Did you understand what the plan was for</p> <p>25 the scene?</p>
<p style="text-align: right;">26</p> <p>1 family.</p> <p>2 Q. Anything at all about the Babb family?</p> <p>3 A. Not anybody directly associated with him.</p> <p>4 I knew his -- I guess it was his uncle or a cousin,</p> <p>5 Bert, but that was it.</p> <p>6 Q. Okay. What did you do for Bert Babb?</p> <p>7 A. I worked as a store clerk for him when I</p> <p>8 was in high school.</p> <p>9 Q. Okay. So how long were you at the X2</p> <p>10 position before the shot was fired?</p> <p>11 A. I couldn't tell you.</p> <p>12 Q. And from the X2 position and until the</p> <p>13 shot was fired, what other information were you</p> <p>14 learning over the radio about that situation?</p> <p>15 A. That the roommate had came out and that</p> <p>16 Mr. Babb was being addressed with the loud hailer to</p> <p>17 come out with his hands empty.</p> <p>18 Q. You could hear that being called over</p> <p>19 the --</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. All right. And do you remember seeing the</p> <p>22 BearCat show up?</p> <p>23 A. No, ma'am.</p> <p>24 Q. Did you know when it showed up?</p> <p>25 A. Before I did.</p>	<p style="text-align: right;">28</p> <p>1 A. No, ma'am. I didn't know what the plan</p> <p>2 was.</p> <p>3 Q. Do you know whether they were going to</p> <p>4 call a hostage negotiator or a crisis negotiator out</p> <p>5 there?</p> <p>6 A. I am assuming that eventually that would</p> <p>7 be the case.</p> <p>8 Q. What is the typical plan for a barricaded</p> <p>9 individual with a gun?</p> <p>10 A. Depends.</p> <p>11 Q. Explain your answer, please.</p> <p>12 A. Depends on the circumstances, who the</p> <p>13 person is, prior history, if they have shots fired.</p> <p>14 I mean, there is so many other variables I can't</p> <p>15 even give you a specific answer to that.</p> <p>16 Q. Okay. So is it normal procedure within</p> <p>17 EPD if you have a hostage situation that there is a</p> <p>18 command structure that sets up a plan for everybody?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. And do you know why there is a plan set</p> <p>21 up?</p> <p>22 A. For the safety of everybody.</p> <p>23 Q. So what was your understanding of what the</p> <p>24 plan was when you were asked to bring the BearCat?</p> <p>25 A. Eventually that we were going to hail in</p>



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1 the BearCat because it is armored.  
2 Q. Okay. Were you going to be using the  
3 BearCat for anything other than hailing the house?  
4 A. I have no idea.  
5 Q. Do you know whether there was a plan to  
6 evacuate the neighbors?  
7 A. No, ma'am. I don't know.  
8 Q. Okay. So what was the overall goal of  
9 this incident plan? Get Mr. Babb out of the house?  
10 A. I don't know what the goal was.  
11 Q. Okay.  
12 A. Eventually that is generally the goal that  
13 we try to achieve.  
14 Q. When you spoke to Sergeant McAlpine on the  
15 phone --  
16 A. Yes, ma'am.  
17 Q. -- about the BearCat, what information did  
18 he give you about the situation?  
19 A. More than what I have already said? He  
20 didn't elaborate on what his plan was with the  
21 BearCat. It was to be taken out there just in case  
22 we needed it.  
23 Q. Why were you the one who was volunteering  
24 to get the BearCat?  
25 A. Because I hadn't heard that it was being

30

1 deployed, and other officers are out there already  
2 that had access to that.  
3 Q. Okay. So is there a limitation on who can  
4 drive that BearCat?  
5 A. No.  
6 Q. Do you have to be certified or qualified  
7 to drive and utilize the BearCat?  
8 A. No, ma'am.  
9 Q. You don't have to go through any training  
10 to use the BearCat?  
11 A. There has been training given to patrol on  
12 how they can come get it.  
13 Q. Okay. And how do you -- how do you get  
14 the BearCat out of the garage?  
15 A. Well, there is a lock, so you have to  
16 unlock it and then gain access to the keys.  
17 Q. Where are the keys kept?  
18 A. Well, I know that there is a set kept in  
19 the SWAT office, and there might be a lockbox where  
20 people can get it if they are regular patrol, not  
21 SWAT.  
22 Q. Okay. So I have seen the BearCat. It is  
23 a big, expensive-looking piece of equipment.  
24 A. Yes, ma'am.  
25 Q. There is no limitation on which officer

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1 can drive that and access it?  
2 A. No.  
3 Q. Any uniformed officer can say "I want to  
4 go get this for this incident"?  
5 A. Well, they can't just randomly choose to  
6 go get it. It usually goes through the chain of  
7 command.  
8 Q. And besides the sergeant, does there need  
9 to be higher authority to deploy the BearCat?  
10 A. I think usually they notify the  
11 lieutenant, SWAT lieutenant that the BearCat is  
12 going to be deployed.  
13 Q. Okay. And when you spoke to -- back up.  
14 Strike that question.  
15 Was there a reason why you called Sergeant  
16 McAlpine versus some other officer about the  
17 BearCat?  
18 A. Because he was the sergeant going to the  
19 scene or on the scene.  
20 Q. Okay. And how did you know that?  
21 A. Via the radio.  
22 Q. All right. And Officer Pieske had already  
23 taken the BearCat to the scene?  
24 A. Correct.  
25 Q. Do you know whether Officer Pieske -- am I

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1 saying that right?  
2 A. Pieske.  
3 Q. Is Officer Pieske on the SWAT team?  
4 A. No, ma'am.  
5 Q. Do you know whether he has ever driven the  
6 BearCat before?  
7 A. No, ma'am.  
8 Q. So I don't know a lot about vehicles. Is  
9 there anything special about the BearCat that  
10 requires any kind of --  
11 A. No, ma'am.  
12 Q. So it is just like driving a big old  
13 truck?  
14 A. Yes, ma'am. Actually, it drives better  
15 than our cars.  
16 Q. Okay. Do you know how long before you  
17 spoke to McAlpine about the BearCat Pieske had taken  
18 it?  
19 A. No.  
20 Q. When you -- I'm looking at this report.  
21 How did you learn that Pieske had taken it? Was it  
22 just gone when you got there?  
23 A. Yes, ma'am.  
24 Q. Okay. Then did you call McAlpine back to  
25 say Pieske had already taken the BearCat?

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1 A. I am assuming there was some  
2 communication. I don't know -- recall if it was via  
3 phone or radio --  
4 Q. Okay.  
5 A. -- that it was already gone, and I was  
6 just headed out there in my car.  
7 Q. So then you left to go to the scene --  
8 A. Yes, ma'am.  
9 Q. -- from the department, the lot where the  
10 BearCat is kept?  
11 A. Correct.  
12 Q. And you went -- and McAlpine told you to  
13 go to the X1 position?  
14 A. Yes, ma'am.  
15 Q. To back up Officer Clark?  
16 A. Yes, ma'am.  
17 Q. Okay. And besides all of -- I know I have  
18 asked you some of these questions different ways,  
19 and I know there is a little bit of repetition here,  
20 but I am trying to get all this complicated  
21 situation in my head.  
22 Were there any other instructions that  
23 McAlpine gave you about what you were supposed to do  
24 back here at the X1 and 2 positions?  
25 A. No, ma'am.

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1 Q. You were just supposed to cover the back  
2 of the house?  
3 A. Yes, ma'am.  
4 Q. So was there any order or direction that,  
5 if Mr. Babb left the house through the rear, that  
6 you were to apprehend him?  
7 A. There was no order given. That is,  
8 obviously, the assumption.  
9 Q. Okay. And were there any orders to shoot  
10 him should he try to leave the house?  
11 A. No, ma'am.  
12 Q. Okay. And if he had tried to leave the  
13 house through the rear, Mr. Babb, what -- how -- do  
14 you have any idea of what you had planned or what  
15 you were going to do?  
16 MR. MATTHEWS: Objection. Calls for  
17 speculation.  
18 Go ahead.  
19 A. That would be based on what he was doing.  
20 BY MS. BURROWS:  
21 Q. Okay. Let me back that question up just a  
22 tad bit. I am making some assumptions, and probably  
23 I should not do that.  
24 You and Clark are there at the X2  
25 position. Are you talking about what might happen

35

1 and how you are going to respond to it?  
2 A. Yes, ma'am.  
3 Q. Okay. So do you normally do that with  
4 another officer on a call like this?  
5 A. Yes, ma'am.  
6 Q. And tell me about those conversations.  
7 What did the two of you think might happen and what  
8 your potential response would be to that?  
9 A. Well, one of the assumptions is he is just  
10 going to run out the back of the house and try to  
11 just get away.  
12 Q. Okay. Anything else that you talked about  
13 that he -- that Mr. Babb might do?  
14 A. Well, if he came out with the weapon or  
15 firing, I mean, what we would do.  
16 Q. Sure. You are just talking?  
17 A. Right.  
18 Q. You are getting prepared?  
19 A. Correct.  
20 Q. And in that preparation, in that  
21 discussion with Officer Clark, were one of you going  
22 to take the position of being the shooter and the  
23 other was backup if that was needed?  
24 A. We didn't have a designated role.  
25 Q. Okay. At the time -- and I spoke to

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1 Officer Clark. He had a different uniform on today.  
2 I mean, it is probably the same uniform, but he had  
3 a vest on with all of his equipment. You don't have  
4 one on today. Is there some reason?  
5 A. Yes.  
6 Q. What is that reason?  
7 A. I don't like the way they look.  
8 Q. Okay. But you are wearing protective gear  
9 underneath your uniform. Correct?  
10 A. Yes, ma'am.  
11 Q. All right. Do you have a camera?  
12 A. Yes, ma'am.  
13 Q. Where is your camera?  
14 A. It is on my belt.  
15 Q. All right. Was there anything else about  
16 that vest that you don't like besides the way it  
17 looks?  
18 A. No.  
19 Q. Okay. Is it easier to use the uniform  
20 this way than with the vest?  
21 A. I don't know the answer to that.  
22 Q. Okay. Are you given, then, the choice of  
23 whether to use that vest or not?  
24 A. Yes, ma'am.  
25 Q. All right. So you don't recall, sitting

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1 here today, how long you and Officer Clark were at  
2 the X2 position?  
3 A. No, ma'am.  
4 Q. So during the time that you are there for  
5 however long it is -- and I am sure it will show up  
6 on dispatch. I can figure that out.  
7 A. Yes, ma'am.  
8 Q. I just haven't been able to track that  
9 yet.  
10 Did you hear any other information coming  
11 over the radio about what was going on at the front  
12 of the house?  
13 A. Meaning --  
14 Q. Well, you knew the BearCat was there.  
15 Right?  
16 A. Right.  
17 Q. Okay. So do you know whether anyone was  
18 deployed to take a position on a rooftop, a sniper  
19 position?  
20 A. No, ma'am. I didn't know where they were  
21 being sent. I knew eventually that there was people  
22 around the front of the house.  
23 Q. But you don't know where they were  
24 stationed?  
25 A. No, ma'am. I think eventually I did hear

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1 that Officer Kidd was on a roof someplace, but I  
2 didn't know where that was 100 percent. A general  
3 area where he was.  
4 Q. Okay. Fair enough.  
5 Again, getting back to these discussions  
6 that you had with Officer Clark, would it be  
7 important to you to know where other officers were  
8 posted if you had to use force, deadly force?  
9 A. General knowledge of where they were.  
10 Q. Okay. So sitting here today, do you have  
11 general knowledge of where any of the other officers  
12 were located while you were at the X2 position?  
13 A. Specifically?  
14 Q. Yes.  
15 A. No, ma'am. I knew Officer Kidd was off to  
16 this area here, I do believe.  
17 Q. Okay.  
18 A. And then I don't recall who was on this  
19 side of the house.  
20 Q. And you are pointing to the -- your  
21 left -- your right of the Babb home?  
22 A. Correct. It would be the southeast.  
23 Q. Thank you for that.  
24 Where is north on this picture? Can you  
25 tell?

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1 A. North would be to the left.  
2 Q. Could you put an N where north is? Thank  
3 you. I couldn't get myself oriented earlier. Thank  
4 you so much.  
5 Anything else that you heard over the  
6 radio from the X2 position about what was going on  
7 up front?  
8 A. I knew that they were hailing the front.  
9 Q. Okay.  
10 A. And the occupants to come out with their  
11 hands empty.  
12 Q. Did I already ask you whether or not  
13 Mr. Babb came to the window in back?  
14 A. No, you didn't.  
15 Q. Did he? Did you ever see him come to the  
16 window in back?  
17 A. I never saw him come to the window.  
18 Q. And you heard someone hailing Babb from  
19 the front of the house?  
20 A. Correct.  
21 Q. Was that coming from the BearCat?  
22 A. Yes, ma'am.  
23 Q. Could you tell who was doing the hailing?  
24 A. I don't recall right off the top of my  
25 head.

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1 Q. All right. But did you know at that time  
2 by the voice? Could you recognize the voice?  
3 A. Yes, ma'am.  
4 Q. Do you know what they were saying when  
5 they were hailing?  
6 A. They were telling the occupants of the  
7 house to come out with their hands empty.  
8 Q. And I think you told me earlier that you  
9 knew Mr. Antonini, the roommate, had come out of the  
10 house at some point. How did you learn that?  
11 A. Via the radio.  
12 Q. Did you -- did anyone give you information  
13 about what Mr. Antonini said about what was going on  
14 inside the house?  
15 A. I do recall something about Babb having  
16 access to rifles.  
17 Q. Do you remember anything -- do you know  
18 who gave you that information?  
19 A. It was just over the radio.  
20 Q. Do you know the names of any of the  
21 officers that spoke with Mr. Antonini in the front  
22 of the house?  
23 A. Not directly. Assumptions.  
24 Q. Are they educated guesses about what  
25 happened? Because assumptions implies that you

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1 don't know or --

2 A. No. The assumption is that the officers

3 in front, which were Barnes, Stutesman, Grose,

4 Pieske, McAlpine, Vinje, spoke with him, but I

5 couldn't tell you specifically which one spoke with

6 him.

7 Q. So that list of officers you just gave me,

8 how do you know they were in front?

9 A. Radio traffic.

10 Q. Okay. Do you know where they were in

11 front, any specific location?

12 A. No, ma'am.

13 Q. Was -- while -- and we all know now,

14 looking backwards, that there was a fair amount of

15 activity going on in the front of the house at

16 various points. How were you being informed of how

17 the situation was evolving?

18 A. Via the radio.

19 Q. And was someone in command saying here is

20 what is going on, here is what we are going to do?

21 A. They are not specifically.

22 Q. So is it just chatter between officers?

23 A. Yes, ma'am.

24 Q. So you are having to interpret this

25 chatter between officers about what is going on?

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1 A. Correct.

2 Q. Okay. During the time that you were at

3 X2 --

4 A. Yes, ma'am.

5 Q. -- did you receive any direct commands

6 from any officer to do anything?

7 A. No.

8 Q. All right. So at some point there was a

9 shot fired?

10 A. Yes, ma'am.

11 Q. Tell me what was going on at your location

12 when the shot was fired.

13 A. Officer Clark and I were standing -- or

14 kneeling at our perimeter position when the shot

15 went out.

16 Q. Did you know who fired?

17 A. Not initially.

18 Q. Who did you think fired?

19 A. To me, based on past experience of

20 gunfire, it sounded like it was from one of us

21 shooting into the house, but I wasn't a hundred

22 percent sure of that at first.

23 Q. Could you tell what kind of weapon was

24 used?

25 A. No, ma'am.

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1 Q. So I understand from reading all of this

2 material that there was a period when no one knew

3 who fired.

4 A. Correct.

5 Q. Was there some conversation going on on

6 the radio about people trying to figure out what was

7 going on?

8 A. Yes, ma'am.

9 Q. Can you tell me what those comments were?

10 A. Just trying to figure out who the shot was

11 from, was that from us or was it from him.

12 Q. Nobody knew?

13 A. Well, the people up front obviously knew,

14 but no one around the perimeter probably knew.

15 Q. Well, the people in front -- who in front

16 knew that that shot was fired by a police officer?

17 MR. MATTHEWS: Objection. Calls for

18 speculation.

19 BY MS. BURROWS:

20 Q. If you know.

21 A. I don't know.

22 Q. So how do you know that the people in

23 front knew who fired the shot?

24 A. Because that is where the shot sounded

25 like it was directed -- or was in the front. It

44

1 wasn't like someone came to the back and shot out

2 the back.

3 Q. Okay. So how long did it take you to

4 learn that Officer Stutesman had fired that shot?

5 A. It wasn't until I got to the front that I

6 knew it was Officer Stutesman.

7 Q. Okay. Let me rephrase the question.

8 How long did it take you to receive

9 information that an officer fired that shot?

10 A. Seconds.

11 Q. Seconds? Didn't you do a roll call?

12 A. We did a roll call.

13 Q. Okay. When did you learn that it was an

14 officer-fired round?

15 A. They -- I want to say that it was -- it

16 was broadcast that it was an officer, and then I

17 think they did a roll call just to make sure

18 everybody was okay.

19 Q. Okay. So just so I understand, after the

20 shot's fired, did you hear anyone communicate who

21 fired that, where did that shot come from, anything

22 like that?

23 A. I recall asking on the radio if that was

24 us or him.

25 Q. Okay. Did anyone respond to your

45

1 question?

2 A. I did get a response that it was an

3 officer.

4 Q. Okay. How long did it take them to figure

5 out who had fired?

6 A. I don't know, ma'am.

7 Q. Okay. And then the roll call happened on

8 the radio?

9 A. Yes, ma'am.

10 Q. So dispatch called out everyone's call

11 sign?

12 A. Yes, ma'am.

13 Q. And you reported Code 4?

14 A. Yes, ma'am.

15 Q. You are fine. Okay.

16 How long did that process take?

17 A. I don't know, ma'am.

18 Q. So Officer Clark told me that at some

19 point you moved from the X2 position to the fence?

20 A. Yes, ma'am.

21 Q. How long after roll call was called did

22 you move up to the fence?

23 A. I don't recall, ma'am.

24 Q. Why did you go to the fence?

25 A. Because I was going to go to the front.

46

1 Q. The front of what?

2 A. The residence here.

3 Q. Why did you -- were you going to go over

4 the fence to do that?

5 A. Because I was called to the front by

6 Sergeant McAlpine.

7 Q. Did you know the house had been cleared

8 when you did that?

9 A. No, ma'am.

10 Q. Had anyone cleared the house when you went

11 over the fence?

12 A. I don't recall.

13 Q. Did you know whether there was anyone else

14 in the house who was armed?

15 A. No, ma'am.

16 Q. So did anyone tell you to come over the

17 fence and run through the yard?

18 A. I didn't go into the backyard of the house

19 in question.

20 Q. Well, where did you go?

21 A. To the house to the north of it.

22 Q. So Officer Clark testified and even made a

23 little mark there that you went over the fence right

24 there. Where did you go over the fence?

25 A. Further to the north.

47

1 Q. Put an X3, please, where you went over the

2 fence.

3 And where did you move from the X3

4 position?

5 A. To Devos Street.

6 Q. So did you go into the Babb yard at all?

7 A. No, ma'am.

8 Q. Did you go up to the Babb house at all?

9 A. I don't recall. I don't think I ever did.

10 Q. So Officer Clark says you went into the

11 Babb yard. Are you sure you didn't go into the Babb

12 yard?

13 A. I am pretty sure I didn't go into the Babb

14 yard.

15 Q. Okay. Do you know any other officer that

16 went into the backyard of the Babb house?

17 A. No, ma'am.

18 Q. Did you see anyone go into the Babb house?

19 A. No, ma'am.

20 Q. So could you draw a line of the path you

21 took from the X3 position to the front of the house?

22 A. I want to say it was just through the

23 backyard here and to the front. I mean -- I don't

24 know what this is right here.

25 Q. Well, this looks like it is another fence

48

1 across the back of this house. Did you have to

2 cross a second fence?

3 A. I think I went through the fence somewhere

4 along the way here.

5 Q. Were there any civilians that you

6 encountered from X3 in your trajectory to the front

7 of the house?

8 A. No, ma'am.

9 Q. What did you do once you got to the front

10 of the Babb home?

11 A. To Devos Street?

12 Q. Yeah.

13 A. I never went to the direct front of the

14 Babb house.

15 Q. Okay. Where did you end up after you --

16 A. On Devos.

17 Q. -- crossed the fence?

18 A. On Devos.

19 Q. Could you put an X4?

20 A. Sure.

21 Q. What could you see when you got to X4?

22 A. The cars on Devos.

23 Q. Could you see the BearCat?

24 A. No, ma'am.

25 Q. Did you see any officers?

49

1 A. Eventually Officer Stutesman.

2 Q. Did anybody contact you to give you more

3 assignments or direction as to what to do?

4 A. Sergeant McAlpine did.

5 Q. What did he tell you to do when you were

6 at the X4 position?

7 A. That I was supposed to stand by with

8 Officer Stutesman.

9 Q. And Officer Stutesman, this is the

10 officer --

11 MS. BURROWS: I'm sorry. I don't mean

12 to point at you.

13 BY MS. BURROWS:

14 Q. Officer Stutesman is the gentleman to the

15 right here?

16 A. Yes, ma'am.

17 Q. And when you say you were ordered to stand

18 with Officer Stutesman, had he come down to the

19 street with you?

20 A. Yes, ma'am.

21 Q. What were you supposed to do with Officer

22 Stutesman?

23 A. Stand by with him.

24 Q. And just watch him?

25 A. Yes, ma'am.

50

1 Q. Were you supposed to take anything from

2 him? Weapons, evidence, anything?

3 A. No, ma'am.

4 Q. What was the purpose of standing with

5 Officer Stutesman at the X4 position?

6 A. Because he had been the shooter.

7 Q. Tell me why -- pretend I don't know

8 anything at all about what is going on. Why is the

9 protocol that you stand with an officer involved in

10 a shooting?

11 A. For support.

12 Q. Okay. Were you supposed to keep him from

13 speaking to other people?

14 A. No. I was just there to help him.

15 Q. Just to help him?

16 A. Whatever he needed.

17 Q. Okay. Did Officer Stutesman say anything

18 to you at the X4 position?

19 A. I am sure we had some conversation,

20 obviously. At that point in time I figured out that

21 he was the shooter.

22 Q. Well, did you know that from Sergeant

23 McAlpine? Isn't that why --

24 A. That is why I was called to the front.

25 Q. Okay. Why you? Because there is a whole

51

1 bunch of officers up here. Why did you -- why were

2 you ordered from the back to come up?

3 A. Because I was asked to come there for him.

4 Q. I am trying to find out -- did Sergeant

5 McAlpine tell you why he wanted you specifically --

6 A. Because I think I was the one requested by

7 Officer Stutesman.

8 Q. Okay. So it was a personal request by

9 him?

10 A. Yes, ma'am.

11 Q. Because you are good friends?

12 A. Yes, ma'am.

13 Q. How long have you known Officer Stutesman?

14 A. Seven years, eight years.

15 Q. So --

16 A. Maybe longer.

17 Q. Okay. And what makes you -- you have a

18 friendship. You do things outside of work?

19 A. We have occasionally.

20 Q. Okay. Did he tell you -- Officer

21 Stutesman, did he tell you why he wanted you to come

22 up?

23 A. No, ma'am.

24 Q. Was he upset when you were there at the --

25 with him?

52

1 A. He was stoic.

2 Q. Stoic. Okay. What does that mean?

3 A. Calm.

4 Q. Tell me what that looks like.

5 A. He doesn't talk very much as it is so --

6 Q. Okay. Did he tell you about what had

7 happened?

8 A. No, ma'am. We didn't discuss it.

9 Q. Tell you what he felt?

10 A. No, ma'am. We didn't discuss it.

11 Q. Tell you about anything that had happened?

12 A. No, ma'am. We didn't discuss anything.

13 Q. How long did you stand there with Officer

14 Stutesman?

15 A. A short period of time. I don't know how

16 long.

17 Q. Five minutes?

18 A. Maybe.

19 Q. Longer?

20 A. Maybe. I don't know.

21 Q. What was going on while you were standing

22 with the officer there on the street?

23 A. I think they were clearing the residence.

24 Q. Do you know what Officer Clark did after

25 you made your crossing?

<p style="text-align: right;">53</p> <p>1 A. No, I don't.</p> <p>2 Q. Did you ever go into the house?</p> <p>3 A. No, ma'am.</p> <p>4 Q. Now, at some point they set up a crime</p> <p>5 scene perimeter around the house. Is that correct?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Did you ever enter into the crime scene</p> <p>8 perimeter?</p> <p>9 A. No, ma'am.</p> <p>10 Q. So where did -- did you leave with</p> <p>11 Stutesman from the location?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. So your car is way over here?</p> <p>14 A. Yes.</p> <p>15 Q. How did you get your car?</p> <p>16 A. Someone brought it back to headquarters</p> <p>17 for me.</p> <p>18 Q. And where did you and Stutesman go from</p> <p>19 the X4 position?</p> <p>20 A. We eventually got in the sergeant's</p> <p>21 Suburban and drove to headquarters.</p> <p>22 Q. How many people drove?</p> <p>23 A. Sergeant McAlpine drove.</p> <p>24 Q. And you were there with Officer Stutesman?</p> <p>25 A. Yes, ma'am.</p>	<p style="text-align: right;">55</p> <p>1 A. No.</p> <p>2 Q. Okay. How many times have you talked to</p> <p>3 Officer Stutesman about the shooting?</p> <p>4 A. Once or twice.</p> <p>5 Q. Have you spoken to any other officer who</p> <p>6 was at the scene about the shooting or about the</p> <p>7 incident?</p> <p>8 A. Not specific details, but yes.</p> <p>9 Q. Who have you spoken with?</p> <p>10 A. I can't give you all of the names, ma'am.</p> <p>11 Q. Well, have you spoken with Officer Clark?</p> <p>12 A. Yeah, I have talked to him about that.</p> <p>13 Q. About the incident?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. What did Officer Clark tell you?</p> <p>16 A. I couldn't tell you.</p> <p>17 Q. Okay. What about Pieske? Have you spoken</p> <p>18 with Officer Pieske?</p> <p>19 A. No, not about this.</p> <p>20 Q. Officer Vinje?</p> <p>21 A. No.</p> <p>22 Q. Officer McAlpine? Sergeant McAlpine?</p> <p>23 A. Yeah, we have talked about that.</p> <p>24 Q. What did he tell you about what happened?</p> <p>25 A. He didn't give me the specific details of</p>
<p style="text-align: right;">54</p> <p>1 Q. And you went directly to headquarters?</p> <p>2 A. I think we stopped and got a cup of coffee</p> <p>3 and then went there.</p> <p>4 Q. Okay. Were you still with Officer</p> <p>5 Stutesman when you were at headquarters?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. How long were you with him?</p> <p>8 A. Until he got sent home.</p> <p>9 Q. How long a period of time?</p> <p>10 A. Ma'am, I couldn't tell you.</p> <p>11 Q. Have you ever spoken to Officer Stutesman</p> <p>12 about what happened since that day?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. Boy, that was a really bad lawyer</p> <p>15 question, wasn't it?</p> <p>16 Have you ever spoken to Officer Stutesman</p> <p>17 about the incident since that day?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Could you tell me what you have talked to</p> <p>20 him -- your conversations, what have you discussed?</p> <p>21 A. What happened.</p> <p>22 Q. What did he tell you?</p> <p>23 A. Babb came out with a rifle and pointed it</p> <p>24 at him, and he shot him.</p> <p>25 Q. Anything else?</p>	<p style="text-align: right;">56</p> <p>1 what happened. We have discussed what the</p> <p>2 expectation of someone pointing a rifle at other</p> <p>3 officers is.</p> <p>4 Q. Okay. Why did he tell you that?</p> <p>5 A. Why did he tell me?</p> <p>6 Q. Yeah. Don't you know what you are</p> <p>7 supposed to do if someone points a rifle at you?</p> <p>8 A. Yeah, I know what to do.</p> <p>9 Q. Why did Officer McAlpine tell you?</p> <p>10 A. He didn't tell me specifically what I was</p> <p>11 supposed to do. We just talked about is it the</p> <p>12 right thing, the wrong thing.</p> <p>13 Q. So did Officer McAlpine tell you that it</p> <p>14 was the right thing to shoot Brian Babb?</p> <p>15 A. No.</p> <p>16 Q. What did he tell you?</p> <p>17 A. I don't recall the specifics of that.</p> <p>18 Q. So you can remember these conversations,</p> <p>19 you can remember the people you had them with, but</p> <p>20 you don't remember what you talked about. Is that</p> <p>21 fair?</p> <p>22 A. Sure.</p> <p>23 Q. Okay. It also says here that you took the</p> <p>24 ICV hard drive from Stutesman's patrol car. Is that</p> <p>25 correct?</p>



57

1 A. Yes, ma'am.

2 Q. And you handed that over to Detective

3 Jones. Is that correct?

4 A. Correct.

5 Q. Was -- did you have anything to do with

6 removing the video or any information from the

7 BearCat?

8 A. No, ma'am.

9 Q. All right. When you were here at the X4

10 position, where was the BearCat located?

11 A. Somewhere in the front here. I couldn't

12 even see it.

13 Q. So at some point the BearCat was driven

14 from this location -- approximately this location up

15 to the front of the house. Did you hear that

16 happening when you are back here?

17 A. Yes, ma'am.

18 Q. Where were you located when that happened?

19 A. Somewhere between point 3 and point 4.

20 Q. Okay. As you are moving from point 3 to

21 point 4, are you trying to see what is happening

22 over here in the Babb --

23 A. No.

24 Q. Why not?

25 A. Because it is of no concern to me.

58

1 Q. What is going on over here where -- is no

2 concern of yours?

3 A. No.

4 Q. Did you know if there were anyone else in

5 the Babb home?

6 A. No.

7 Q. Could you see the Babb home from this

8 field here? From the point 3 down to the 4,

9 anywhere in here could you see the Babb home?

10 A. I could see it.

11 Q. Could you see what was going on in there?

12 A. No, ma'am.

13 Q. Did you see anyone else?

14 A. No.

15 Q. Did you see any officer go inside the Babb

16 home?

17 A. No.

18 Q. I am looking for something here.

19 A. You know, actually, thinking about this

20 here, there is a chance that I could have ended up

21 in the backyard, because originally I might have

22 thought about helping clear the house.

23 Q. Okay.

24 A. Because I had been on SWAT, and they

25 generally like to use experienced people to --

59

1 Q. Do a house clearing?

2 A. So there is a chance I could have ended up

3 in the backyard there, but I never went in the

4 house.

5 Q. Okay. So now my lawyer brain --

6 A. Okay.

7 Q. -- is going a little bit crazy here.

8 A. That is fine.

9 Q. Which is it? You went into the backyard

10 of the Babb or you went in next door? And I

11 understand if you want to think about it, but I

12 really need your best answer here.

13 A. You know, like I said, there is a chance

14 that I could have went in the backyard thinking that

15 I was going to go help clear the house before I was

16 sent to the front.

17 Q. That makes more sense to me, but I want to

18 know what you remember doing.

19 A. That is what I am just telling you.

20 Q. Okay. Now, let's see if we can work on

21 that a little bit.

22 Do you remember what you did from X3

23 forward?

24 A. If I was in the backyard of the Babb

25 house, it was the expectation that I was going to go

60

1 clear the house.

2 Q. Okay. Did you check with somebody on the

3 radio? "What do you want me to do? Here I am."

4 A. And then I got sent to the front.

5 Q. How did you get to the front?

6 A. I -- I went through this yard here and

7 this field here.

8 Q. So you went back over the fence?

9 A. Yes, ma'am, if I did -- I didn't walk

10 through the yard and -- haphazardly while they were

11 doing whatever they were doing there.

12 Q. Okay. I apologize. I am looking for --

13 A. You are fine.

14 Q. -- something that I wanted to ask you

15 about based on your testimony.

16 Did anyone ever talk to you about some

17 officer accessing the Babb house right after the

18 shooting but before the house had been formally

19 cleared? Somebody went in and probably shouldn't

20 have gone in, anything like that?

21 A. No, ma'am.

22 Q. Okay. Prior to arriving at the scene, did

23 you do any kind of criminal history check on Brian

24 Babb?

25 A. No.



61

1 Q. Or any calls for service at that address?

2 A. No.

3 Q. So as part of the lawsuit, I get sent a

4 lot of information, and your attorneys have done a

5 really good job of giving a pretty good, fair amount

6 of information.

7 The after-action report -- and I don't

8 know whether it was part of the homicide

9 investigation or part of the use of force

10 investigation, but some unknown officer went into

11 the residence after the shooting. Do you have any

12 information about who that was?

13 A. No, ma'am.

14 Q. Okay. And it wasn't you?

15 A. It was not me.

16 Q. All right. Were you -- other than Officer

17 Thompson -- Detective Thompson, were you interviewed

18 by anyone in any form as a result of this shooting?

19 A. No, ma'am.

20 Q. So since Thompson interviewed you, is this

21 the first formal interview of you about the

22 incident?

23 A. Yes, ma'am.

24 Q. Okay. Did you read any of the media

25 reports about this shooting in the newspaper?

62

1 A. Probably. I generally don't read the

2 newspaper or watch TV.

3 Q. Okay. So you didn't see any of the news

4 reports on it?

5 A. I am sure I did see some.

6 Q. Okay. Did you see any of the reports or

7 read any of the reports that you felt were unfair --

8 A. Like from --

9 Q. -- towards the police?

10 A. From the news or --

11 Q. Yeah.

12 A. -- like --

13 No.

14 Q. Or inaccurate?

15 A. Well, most of the news is inaccurate.

16 Q. Okay. All right.

17 A. So if I read something, there is a chance

18 that I could have thought that.

19 Q. Do you remember any specific report that

20 you felt was inaccurate about this incident?

21 A. No, ma'am.

22 Q. Okay. I think that is all I have for you.

23 I do believe that is it.

24 MR. MATTHEWS: No questions. We will

25 read and sign.

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1 (The deposition was concluded at

2 4:25 p.m.)

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1 State of Oregon )

2 County of Lane ) ss.

3 I, Christine Oljace, CSR-RPR, a Certified

4 Shorthand Reporter for the State of Oregon, certify

5 that the witness was sworn and the transcript is a

6 true record of the testimony given by the witness;

7 that at said time and place I reported by stenotype

8 all testimony and other oral proceedings had in the

9 foregoing matter; that the foregoing transcript

10 consisting of 63 pages contains a full, true and

11 correct transcript of said proceedings reported by

12 me to the best of my ability on said date.

13 If any of the parties or the witness requested

14 review of the transcript at the time of the

15 proceedings, correction pages are attached.

16 IN WITNESS WHEREOF, I have set my hand this 6th

17 day of November 2017, in the City of Eugene, County

18 of Lane, State of Oregon.

19

20

21 *Christine L. Oljace*

22 Christine Oljace, CSR-RPR

23 CSR No. 05-0397

24 Expiration Date: September 30, 2018

25

Judson Warden

1 Judson Warden  
 2 McGowan, et al., vs. Stutesman, et al.  
 3 October 3, 2017  
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 18 I declare under penalty of perjury that the 63  
 19 pages referenced above are true and correct except  
 20 for such corrections as noted. Executed this .....  
 21 day of ..... 2017.  
 22 |.....|  
 23 Judson Warden  
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 25